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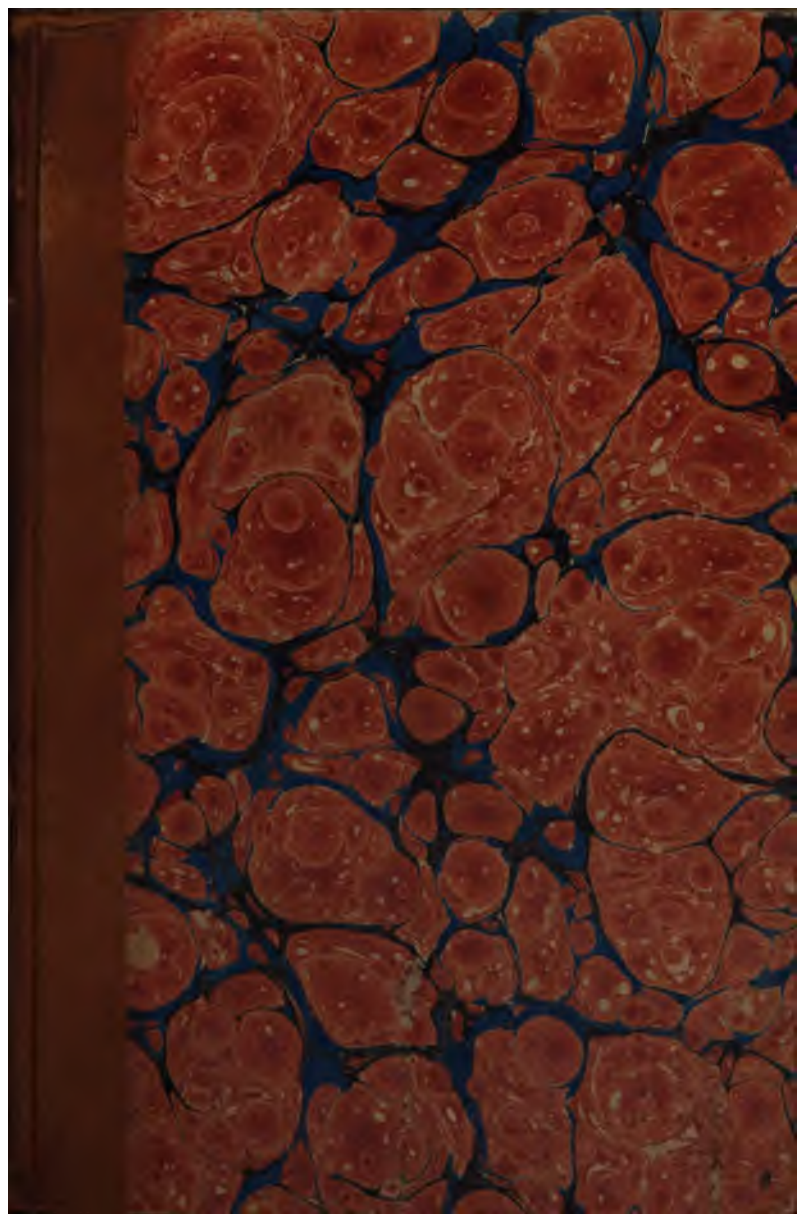
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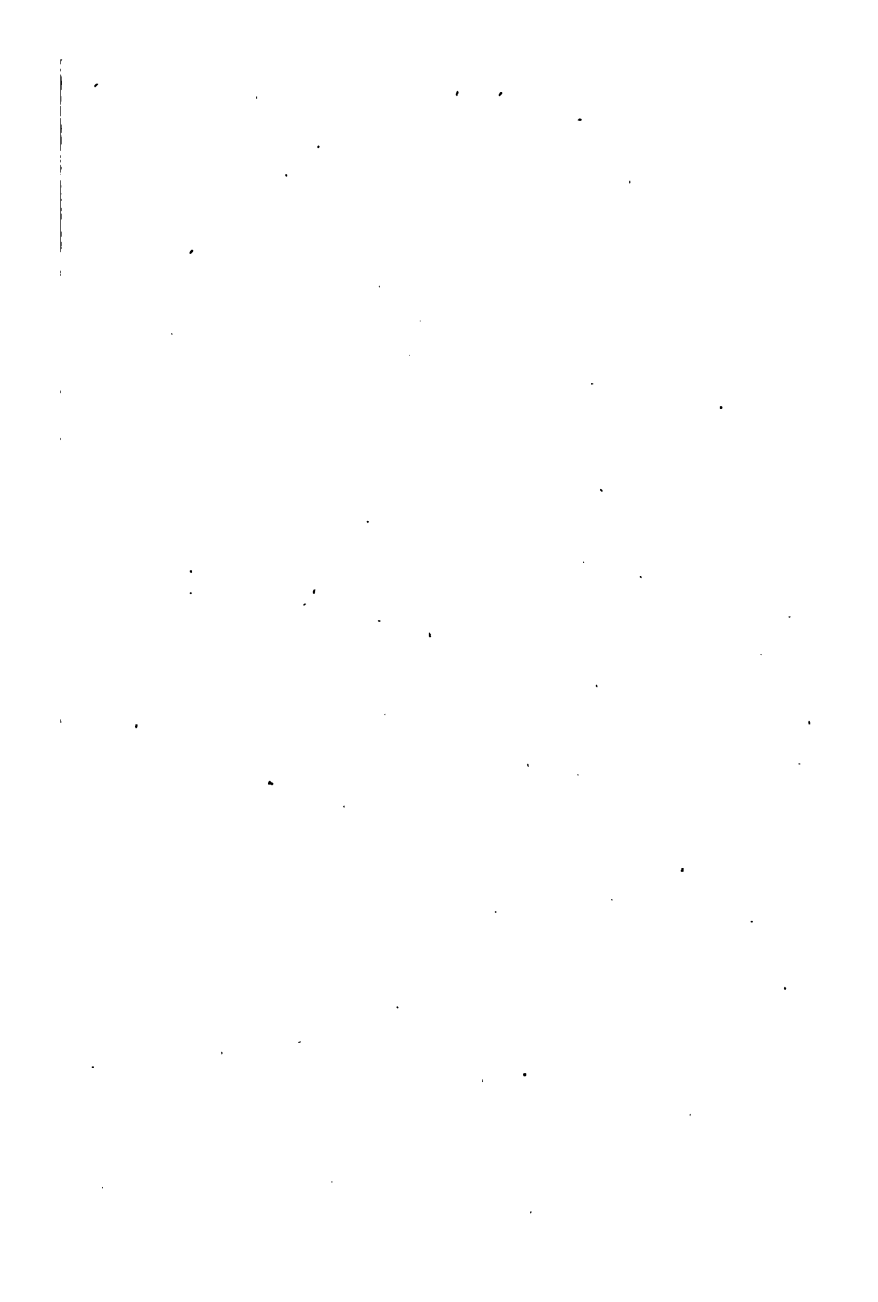
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CHURCH PEWS,
THEIR ORIGIN AND LEGAL INCIDENTS.

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CHURCH PEWS,
THEIR ORIGIN AND LEGAL INCIDENTS,
WITH
SOME OBSERVATIONS
ON THE
PROPRIETY OF ABOLISHING THEM,
IN THREE CHAPTERS.

BY
JOHN COKE FOWLER,
OF THE INNER TEMPLE, BARRISTER AT LAW.



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CHURCH PEWS,

&c.

CHAPTER I.

General Importance of the Subject—Object of this Chapter—Derivation of the word “Pew”—Circumstances attending their introduction into the English Church—Practice of the Church before the Reformation—Pews gradually introduced, and for the most part after the Reformation—Quotations from histories, episcopal letters, ancient faculties, and synods, in support of the above position—Conclusions drawn from them—Theory of the introduction and use of church pews as connected with puritanical practices, noticed—Conclusion.

To those who have only been in the habit of attending churches fitted up with close pews, in which the accommodation is still adequate to the population of their respective districts, the subject of this inquiry may perhaps appear to be of the most trifling importance. They have probably never thought at all of the advantages

or the evils of pews in churches, or if they have, it would perhaps appear to be a matter of too secondary importance compared with the ministrations of the Church, or even the substantial repair of the edifice, to deserve serious consideration. Nevertheless, the subject (never a trifling one) has of late years, for various reasons, been justly claiming the attention of the public more and more. For instance, the necessity of accommodating the largest possible number of persons in the numerous new churches which have been lately built, or are now building, has suggested inquiries into the best method of arranging the greatest number of seats in a certain space. Of late, too, more attention, more taste, and more wealth, have been bestowed upon the architectural beauty of churches ; less anxiety about extraordinary personal accommodation has been manifested ; and above all, in populous districts it has become painfully obvious, that the Church is grievously hampered in the reception of her flock by the system of close pews.

The origin and history of church pews is indeed a point of secondary importance. For even if pews had been a peculiar feature of English parish-churches, ever since the foundation of them, this would be but a slender argument in their favour, if it can be shown that

they are in fact injurious now to the business and interests of the Church. But, comparatively unimportant as it is, yet in order to make this work more complete than if it were limited to a notice of the legal incidents of pews, and to remove any prejudices that may exist in favour of them, on the score of their supposed antiquity, I will state a few particulars relative to the period and circumstances of their introduction into the English Church.

The word "pew," defined by Dr. Johnson to be "an inclosed seat in a church," is said to be derived from a Dutch word *puye*, or *puy*, which means the front or projecting part of an edifice, or the place at the town-hall where proclamations are published. For instance, "Ter Puye afgeleezen," published at the front of the town-hall¹. This again is supposed to be derived from the Latin word *podium*, which meant a place in a theatre next the orchestra; and in the amphitheatre next the arena where the emperor, consuls, &c. sat; and also any place extended beyond the wall of a building like a stage or gallery², which last meaning seems to correspond with the Dutch use of the word *puye*. The author of a very able paper

¹ Sewel's Dutch and English Dictionary.

² Facciolati.

on the history of pews, read before the Cambridge Camden Society, has attempted to derive the word from a monkish use of the word *podium*, as signifying the kneeling-board of a stall in a choir, and thence the whole stall or seat. But I do not understand why that should be resorted to, when the word *puye* itself had in the Dutch language a sense which is sufficiently connected with its English meaning. For in Dutch it seems to have meant a kind of enclosed balcony attached to the front of a building, and so in old English writers we shall find that the use of the word was not confined by them to ecclesiastical purposes. The same writer quotes a passage from Pepys's Diary for 1668, in which he speaks of a 'pue' in Whitehall Theatre, and in another page of a 'pue' in Greenwich Church. So Milton writes, "It is not necessary to the attainment of Christian knowledge, that men should sit all their life long at the foot of a pulpited divine, while he, a lollard indeed over his pulpit cushion, in almost the seventh part of forty or fifty years teaches them scarce half the principles of religion; and his sheep oftentimes sit the while to as little purpose of benefiting *as the sheep in their 'pues' in Smithfield*." How it came to pass that the word ceased to be used in a mere general sense, and became applicable only to enclosures

in churches, does not seem clear, nor is it worth while to take up more space in trying to trace further the gradual settlement of the sense.

The history of its introduction into English churches, and the circumstances attending it, are involved in some obscurity. There is no doubt, however, that before the Reformation parish-churches were not pewed, that is to say, the floor of the nave or body of the building was never covered, as at present, with close boxes. On the contrary, no exclusive seats, with very few exceptions, were allowed; and if there were any seats, they were generally such as were moveable, and the personal property of the incumbent.

Persons who have visited Roman Catholic countries, can easily imagine that this would be the case so long as England formed part of the Romish communion. For whatever may be the errors and corruptions of that Church, respect of persons within the walls of her sacred buildings, and indulgence of personal ease and accommodation there, are certainly not to be laid to her charge. The services of that Church indeed make accommodation for *sitting* of much less consequence to her members than to ourselves. Chaunting and prayer, with short selections from the Scripture, form the chief

features of those services; and accordingly Roman Catholic congregations will be generally observed to be either standing or kneeling. Nor was the practice of preaching lengthy sermons, or rather (as it should now be called) of reading long essays, so much in vogue as it was afterwards under the reign of the Puritans, who carried it to a ludicrous extent, or as it is at present in a more moderate degree amongst ourselves. Under these circumstances, therefore, we should not expect to find general and luxurious accommodation for *sitting* in the early English churches, even if there were nothing but mere conjecture to rely upon.

The most probable account is, that the exclusive appropriation of seats was *gradually* brought into fashion. The origin of English parish-churches was, speaking generally, the erection of an edifice by the feudal lord of a manor on his own property, for the benefit of his own family and his tenants, and the subsequent annexation of the tithes of that district to the church which he had built. Many founders of churches would probably reserve some part of the floor for the use of themselves, their families, and their successors; or if not, yet in the time which elapsed between the foundation of most of our churches and the Reformation, it was natural that the same

pride and exclusive feelings which have served to perpetuate pews, should have suggested to their successors, sooner or later, to obtain for themselves a grant or license of appropriation of some distinct portion of the church. Many years might again elapse before any one would presume to solicit a similar distinction. But in proportion as the awe of feudal dignity faded away, and growing commerce swelled the wealth and importance of other classes, and the property of ancient families began to be transferred to other hands, so the acquisition of Church privileges was extended, and other influential families were allowed occasionally to appropriate new portions of the floor. So that about the period of the Reformation, a parish-church would probably have presented the appearance of a floor partially covered with moveable seats, open benches, chairs or stools, with here and there one or more detached pews appropriated to the principal parishioners. Then the Reformation, with its lengthened services, and sermons, rendered accommodation for sitting of much more importance than before, and pews became rather more common than before: bye and bye the old open seats and chairs required reparation or renewal; and when a general new seating was determined upon, the privileges of the pew were imitated

throughout, and the old fashion of moveable or open seats almost entirely discarded.

Now if it were possible to trace accurately the changes which have taken place in any one parish-church at present furnished with pews, it would serve to set at rest all conjecture on this head, and furnish a sufficient guide to the history of others. But how can this be done? The minutes of parish meetings and parish records may be searched in vain for the materials of such a history. The memory of living men is of no avail. The accounts of the last erection of pews is not decisive of any thing, for there are few churches which have not been pewed more than once. Therefore, to illustrate and corroborate this account of the introduction of church-pews by any single and complete example, would be at least a very difficult task, and perhaps quite impracticable.

But although I am not able to furnish an illustration of this kind, it must not be supposed that there is no evidence at all to support that account. Much may be gathered from various quarters, which tends to confirm each part of it. In the first place, Dr. Burn, after saying that before the Reformation there were no distinct apartments assigned to distinct inhabitants, except for some very great persons, goes on to state that such seats as existed were

moveable, and the disposable property of the incumbent. In proof of this, he asserts that "many wills of incumbents are to be seen, whereby they did of old bequeath the seats in the church to their successors or others as they thought fit¹."

Again, the old law books are almost wholly silent as to any disputes arising out of contested claims to church-accommodation, with the exception of two or three cases relating to the chancels, and seats of persons of high rank; which clearly shows that there were no common and general rights connected with church-sittings which were liable to litigation, and strongly confirms Burn's statement as to the seats being the personal property of the parson.

Add to this evidence the fact that in many churches, ancient open benches are still in existence, sometimes in their ancient form, and sometimes worked up into close pews; whilst, on the other hand, it is believed to be impossible to point to any instance of a church in which any considerable number of the present pews were erected before the Reformation; and the inference cannot be resisted that the former have survived because they were the rule, and the latter are not to be found because with rare exceptions they were not the fashion.

¹ Ecclesiastical Law, vol. i. Title, "Church-seat."

Again, it is not easy to prove, but yet there is good reason to believe, that some instances of appropriated manorial seats did exist before the Reformation. If not, how is the old sense of the word 'pew' as applied to church-accommodation to be accounted for, as it cannot be shown that it was suddenly introduced at the Reformation, or was merely used to designate either open benches or stalls? The writer of the paper referred to before, in attempting to show that pews had no existence whatever under any circumstances before the Reformation, quotes a few passages which make against his position, with a view, if possible, to defeat their effect by subjecting them to the process of his clever criticism. One or two of them, which I shall take the liberty of transferring to this page, will, I think, carry conviction to any unprejudiced mind, that such closed and appropriated seats did actually sometimes exist about the time in question. In the "Supplication of the poore Commons" in 1546, addressed to Henry VIII. on the subject of the Bibles lately furnished to every church, it is said of the Priests, "For where your Highness gave commandment that thei should se that there were in every parish-church within your Highness realm one Bible at the least set at liberty, so that every man might freely come to it, and

read therein such things as should be for his consolation, many of this wicked generation, as well Preests as other their faithful adherents would pluck it other into the Quayre, other *into some Pue where poor men durst not presume to come*¹."

A still stronger passage is quoted from Whitaker's History of Whalley, p. 248. "The first pew," says he, "on the right hand of the nave belongs to the manor of Hapton, and is constructed of ancient and massy wainscot, long prior to the Reformation. The next, which is much more modern, will yet prove the falsehood of a commonly received opinion, that before that period the naves of our parish-churches were like our cathedrals, or only fitted up with forms. It is a magnificent old pew, belonging to the manor of Read, *with this inscription in black letter: Factum est per Rogerum Nowell Armigerum, Anno Dom. 1534.* On the outside, and apparently upon an enlargement of the pew, is a repetition of the former inscription, but of a much later date: "Factum est per Rogerum Nowell, Ann. 1610."

So in a quotation from the twelfth chapter of a synod at Exeter, holden by Bishop Quivil, in the year 1287, we have the following passage

¹ History of Pews, p. 15.

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translated from the Latin: "We have also heard that the parishioners of divers places do oftentimes wrangle about their seats in church, two or more claiming the same seat; whence arises great scandal to the Church, and the divine offices are sore let and hindered: wherefore we decree that *none shall henceforth call any seat in the church his own, save noblemen and patrons*; but he who shall first enter, shall take his place where he will."

Without stopping to criticise these passages particularly, I must say, that they appear to me to afford very strong grounds for presuming that manorial pews, in the modern sense of that term, were the early forerunners of the pews of the 17th century, occasionally allowed for various reasons, as exceptions to the general practice. The learned writer who quotes them, feeling their force, says very little about them, and certainly offers no remarks which alter their natural effect.

Again, as an example of the practice amongst private individuals of obtaining grants of separate and distinct seats for themselves and their families before the fashion became general, I will adduce a faculty, dated in 1579, for the erection of a pew in the church of Chesterton, in the county of Cambridge, part of which I quote from the same source. It is granted by

an officer of the Bishop of Ely, and sets forth that the churchwardens and another parishioner of Chesterton appeared on a certain day before him, and stated in writing that "Thomas Lorkine, or Larkine, gentleman, Doctor in Medicine, and Regius Professor in the University of Cambridge, had held for five or six years past freehold property in the aforesaid parish, equal in extent to that of any other parishioner: and that up to that time no seat, or place, or stall, had been granted to the said Thomas Larkyn, suitable to his rank, estimation, and property in the aforesaid parish-church. Which premises considered, they judged it most convenient that the said Thomas Larkyn, his wife and heirs, should for ever sit apart and by themselves in a place on the north side of the church nearest the chancel, on the left hand of the chancel-door, next to the chapel where John Balfude, gentleman, hath been wont to sit during the time of divine service; from east to west *the space to be assigned to him containing eleven feet*, from north to south seven."

A pew still stands in Barking Church, Suffolk, bearing date 1601; another in St. Mary, Geddington, in the county of Northampton, dated 1602, and the building of pews went on increasing as we approach the civil war. The Cambridge critic quotes the following entry of

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1611 from the St. Margaret's accounts. "Item: paid to Goodwyfe Wells for salt to destroy the fleas in the churchwardens pew 6*d.*;" which not only shows, as he justly remarks, that pews were even then baized, but also proves that they were not an entire novelty at that time.

Lastly, to show the period at which pews came into general use, I refer to a letter of Dr. Corbett, Bishop of Norwich, written to his clergy in 1622, in which he says, "Stately pews are now become tabernacles with rings and curtains to them. There wants nothing but beds to hear the word of God on: we have casements, locks, and keys, and cushions, and for those we love the church. I will not guess what is done within them: who sits, stands, or lies asleep at prayers, communion, &c.; but this I dare say, they are either to hide some vice, or to proclaim one; to hide disorder, or to proclaim pride." So in the orders and directions of Bishop Wren, issued in the Diocese of Norwich in 1636, it is directed "that no pews be made over high, so that they which be in them cannot be seen how they behave themselves, or the prospect of the church or chancel be hindered; and therefore that all pews which do much exceed a yard in height, be taken down near to that scantling¹."

¹ See note to Archdeacon Hare's primary Charge, p. 50.

Many other documents issued by the Bishops shortly before or during the great Rebellion, might be quoted to prove that pews were then either general, or rapidly increasing in the churches. But I think it is unnecessary, in a work of this description, to add more proofs, as I hope that I shall have already satisfied general readers of the truth of the statements I have advanced.

Upon the whole, therefore, I conclude that some pews existed at a very early period after the Conquest; that they increased considerably soon after the Reformation; and became the prevalent fashion shortly before the Rebellion. And the circumstances of growing wealth, increasing emulation between class and class; the breaking down of all feudal distinctions and feelings; the alteration of the services of the Church of England; the depreciation of all respect for the sacred edifice which marked the conduct of the Independents; together with our natural partiality for luxurious ease, appear to me to account sufficiently for the spread of the fashion at that time.

Another circumstance, however, has been suggested, as a reason for the prevalence of the fashion at that time, which has, perhaps, met with more consideration than it deserves from some, because it throws the odium of inventing

or multiplying pews upon the puritanical party, towards which most men of taste and letters have no favourable leaning. It is alleged, that the Puritans, being often in danger of presentments for contumacy and disobedience to episcopal authority, were desirous of concealing their singularities as much as possible, for which high pews afforded them excellent shelter. Bowing when the name of Jesus was mentioned; bowing to the altar on entering the church; and kneeling to receive the Sacrament;—were three points, amongst others, to which the Puritans idly objected; the latter being especially disagreeable to them. In support of this notion, Dr. Udall, rector of St. Austin's, London, has been quoted, who, in a tract called "Communion Comeliness," written in 1641, observes, that "those who received the holy Sacrament in their pews escaped the notice of every one but the clergyman with respect to standing or kneeling; and that it is like private masses, though they do receive, if they receive it scattered here and there, and are shut up close, that they can neither hear nor see until the Minister come to the pews where they sit; in which sometimes there are divers pews, and they far distant one from the other, in which there are but one or two communicants in the corner, and one or two in the other corner, and others

up in the gallery, and so to have the Minister to hunt up and down to search them out. One single communicant alone in a pew by himself, and rent from all the rest of the communicants, and receiving, as it were, in a room alone, is as it is in housling of the sick among the Papists. At the rail it shall be seen whether they kneel or no : all in close pews may be concealed." It may be observed upon these passages, that as the Minister himself must always have been a witness of the act of disobedience in the communicant, however the pew may have concealed him from others, the advantage of the supposed hiding-place was not very important. Besides, in another place, Dr. Udall seems to approve of the then novel fashion of pews ; and as he does not appear expressly to charge the building of them (which he allows was but recent) upon the Nonconformists, as a means of shelter during service—a device which, if really practised, he must have well understood—these passages do not appear to me to bear out the accusation which has been made against the Puritans. Nevertheless it may easily be believed, that if pews were ever high enough to afford shelter to acts of disobedience, the fashion would be an acceptable one to the revolutionary party in the Church ; and whether that were the case or not, they certainly furnished comfortable quar-

ters during the grotesque and extravagantly long discourses of that time, on which ground alone they would naturally become the most popular accommodation in the Church. It may be probable, that in particular instances influential Puritans, actuated by such motives, promoted the introduction of them; but in the main, I believe the circumstances enumerated above are enough to account for the fashion. And now, having touched upon these points for the sake of furnishing a more complete notice of Church-pews, I pass on to the more practically useful, if not more interesting consideration of the legal incidents connected with them.

CHAPTER II.

THE LEGAL INCIDENTS OF CHURCH-PEWS.

General advantage of understanding this subject—Right of Parishioners in general, and the principle of it—Its practical operation—Officers of the Church concerned in this department—How far the power of the Ordinary extends—Nature of the office of Churchwarden—Special exceptions to the general right of Parishioners—Definition of a Faculty—Nature of a prescriptive right in general, and of a prescriptive title to a pew—Probable effect of the act for shortening the time of prescription in certain cases—A right to a pew in the nature of an easement—Definition of an easement—What courts have jurisdiction over suits connected with pews—Evidence required to support a claim to a pew as against the Ordinary, and also against a private individual—Pews can neither be sold nor let in old churches—Apportionment of pews, and priority in seats—Aisles, chancels, and chapels noticed—The creation and demolition of pews—Rules for the guidance of Churchwardens in the disposal of seats—The case of modern churches built under recent Act of Parliament noticed—Conclusion.

MANY of the unfortunate quarrels and angry feelings which from time to time arise in pa-

ishes on the subject of the erection, renewal, enlargement, or appropriation of pews, might have been easily avoided, if the interested parties had understood the legal rules which are laid down respecting them. These legal rules, (which for the most part are sufficiently well established and clear,) embrace the rights and privileges of the parishioners as a body; the special rights and claims of particular individuals; the powers of the courts and officers having jurisdiction over pews; and the mode of obtaining redress for obstructions in the use and enjoyment of them.

It may be advisable to observe here, that in collecting and stating the law upon this subject, no material proposition will be advanced without some legal authority for it. But in order to avoid the unprepossessing appearance which a legal inquiry in a strictly legal form presents to the eyes of an unprofessional reader, as little as possible will be quoted from law-books, and references to the most important cases but sparingly made at the foot of the page. I must also apologize to the same class of readers for the use of some technical terms, which I can assure them are absolutely unavoidable; but I shall endeavour to accompany them with such a paraphrase or explanation as will enable all persons to understand what they mean.

The general right of every parishioner to be accommodated with a seat for himself and his family in the parish-church is indisputable. For this accommodation, which ought to be only just so much as he really requires, he is not liable to pay anything by way of rent or acknowledgment, but only settled residents in the parish are considered to be parishioners, who may prefer this claim¹. Now this privilege is clearly founded upon a sound principle of common justice ; for as the law expects the pews in parish-churches to be repaired by the resident parishioners at their common expense, and as this general liability is enforced upon them by the law ; so in consideration of their burden it upholds their right to be seated in the pews which they repair, and considers all pews to be the *common* property of the parish for the use in common of all such parishioners.

Such is the general rule affecting the rights of the parishioners at large. In its practical operation, however, the rule is subject to some qualification. It does not recognize a right which each parishioner can enforce for himself by entering the church, and seating himself in any vacant place which he may observe ; on

¹ Groves and another v. Rector of Hornsey. 1 Haggard Consist. Rep. 194.

the contrary, it only confers upon him a right to apply to the officers of the church to allot to him adequate accommodation, if it be in their power to do so.

The officers of the church who are concerned in these matters are the ordinary and the churchwardens. The ordinary (a term frequently used, but rarely explained), is a name applicable to every bishop having an original jurisdiction; and also to every commissary or official of the bishop, or other ecclesiastical officer invested with judicial powers; but is most usually identical with the bishop of the diocese. The churchwardens (who, together with the incumbent, have the control of the edifice of the church, and are bound to take care of its furniture) are the resident officers or agents of the ordinary for the purpose of distributing the accommodation in the parish-church amongst the parishioners, and are in all things subject to his controlling authority.

Now, assuming my first proposition to be correct, that the parishioner is not empowered to enforce his own claim to a seat, but only to prefer it to the officers of the church, it follows that the privilege of the parishioner is, in fact, commensurate with the power of the officer, and that where the latter fails to extend, there the claim must fall to the ground.

The substantial question, therefore, comes to this—how far the power of the ordinary extends; the validity and goodness of the claim being of no avail, unless the officer of the church has the power to enforce it.

The power of the ordinary, then, to place and seat resident parishioners, extends in general, and in the absence of peculiar circumstances, over all that part of the body of the church which is repaired at the expense of the parish; and his authority to distribute the seats there, if exercised without partiality, or injury to the present or future inhabitants, does not appear to be subject to any control or limitation whatever. Neither the minister nor the vestry have any right to interfere with him or the churchwardens in the exercise of their authority (as is often erroneously supposed), except so far as their advice or suggestions may be acceptable¹. But keeping always in view the general accommodation of *all* the parishioners, the ordinary may from time to time, by his sole authority, make new distributions of the sittings, so as to meet the varying number and wants of the inhabitants. He may displace those whom he has formerly placed, assign them new seats, break up old arrangements, and, in short, adopt

¹ Fuller v. Lane. 2 Add. 424.

any plan which will best give effect to all legitimate claims for accommodation.

It is, however, very unusual to have recourse to the ordinary himself, in matters of this kind, as the churchwardens, who are his local officers, are mostly able to arrange them, without any reference at all to his controlling and appellate authority. Therefore, for the sake of convenience and brevity, and requesting that it may be borne in mind that they are merely the local and ministerial officers of the ordinary, I shall sometimes mention churchwardens without referring to the source of their power, and as if they had both original and final jurisdiction over church seats.

Such, then, being the general power of these officers, and the equitable foundation of it, let us suppose the case of an application for a sitting made to the churchwardens by a person newly settled in a parish. Suppose also the floor of the church to be covered with close pews, and some of these pews to be only *partially occupied*. Is it possible that the churchwardens may be unable to comply with or enforce the application under such circumstances, and that the claim should actually fall to the ground? It is; for there are special exceptions to the general rule above stated, recognized by law as of equal validity with

the rule itself, and which admit of the right to a pew or sitting in a parish-church being established paramount to the authority of the churchwardens, and conclusively against all the world.

Now such special exceptions must invariably be founded on one or other of two grounds : that is to say, either upon a faculty actually existing, and capable of being produced ; or upon a prescriptive right, which supposes such a faculty to have once existed. And it is in these two cases only that the common rights of the parishioners can be lawfully superseded. A faculty, which in these cases either actually exists, or is supposed by the law to have existed, is the instrument by which some privilege is granted to a man by the favour and indulgence of ecclesiastical authority, and in the case of church seats is, generally, a license granted by the ordinary, or some officer to whom the bishop delegates his authority in such matters, to a certain person and his heirs, being owners and inhabitants of a certain dwelling-house, for him, and them, and their families, to sit, stand, and kneel, in a certain pew, in the church of the parish in which the house is situated, during divine service, *exclusive of all other persons whatsoever*. The form of the instrument may vary, but in substance it ought

always to annex a certain pew (whether already built, or about to be built, by virtue of the same faculty,) to a particular dwelling-house; as the annexation of a pew to the person of the grantee, (or party to whom the faculty is granted,) though it has not unfrequently been attempted, is, in fact, invalid in law. These instruments are at present not often applied for, or granted; but when a faculty for appropriating a pew is required from the ordinary, notice must first be given in the church, calling upon the incumbent, churchwardens, and parishioners, to show cause why it should not be granted; and if no good cause is shown, in due time the faculty is issued.

It is also worth mentioning here, that the power of the ordinary itself is subject to some limitations; and therefore, although it is now so circumspectly exercised, that little or no litigation occurs about it, it must not be forgotten that the validity of a faculty may be questioned, like that of any other legal instrument. For instance, it has been long decided that a faculty *to a man and his heirs*, to build and exclusively occupy a pew, is invalid. So a faculty granted to a non-parishioner, or one which purports to annex a pew to lands in the parish, instead of to a house, is invalid. And if instances should again occur of such instru-

ments being applied for, or of others deviating from the usual form and effect, cause should be shown against them before the ordinary, and if, notwithstanding, they are issued, the point should be contested, and carried before an appellate tribunal.

Such is the general nature of a faculty, which is all that is necessary for the present purpose. But a prescriptive right, which is the other ground of special privileges, and that which is by far the most usual, requires a more particular notice. A title by prescription¹ is a title to property corporeal or incorporeal, (that is, to the realty or land, or to mere rights, as distinguished from the ownership of land, exercisable over, or by means of, the land of another, such as a right of way, or of common,) acquired by unobstructed usage and the lapse of time, and which, in the absence of any circumstances tending to repel the usual inference, the law supposes to have had a valid commencement. It is obvious that the natural and most direct mode of proving a title, is to

¹ Prescription is a term derived from the Roman law, and is nearly the same as *usucapio*. There were different periods recognized as making the title by usage respectively inchoate and complete; "longi vel longissimi temporis præscriptio;" which is accurately illustrated by the provisions of the Prescription Act, 2 & 3 Wm. IV. c. 71.

show distinctly how it commenced, either by witnesses who were present at the transaction, or by producing authenticated documents which record it. But these means alone would be inadequate to the security of property, because the witnesses of the transfer may be dead, and the most durable memorials that can be devised are liable to decay, loss, and destruction. The law, therefore, in order to meet such cases, allows recourse to be had to *circumstantial evidence*, and the circumstances which afford the strongest presumption of a valid title to real property, or rights connected with the realty, are continued possession of the property, or protracted exercise of the rights in question. Where these facts alone are proved, and nothing appears to contradict or explain them upon the ground that they took place by the permission or license of the real owner, or in any other way inconsistent with the notion of an independent adverse claim of right, there the law steps in, and presuming men's acts to be legal, attributes this long possession of property, or exercise of a right, to a legal rather than an illegal origin. It supposes that the acquiescence of those whose interest it was to interrupt it, arose from the knowledge and consciousness that the acts of enjoyment were founded upon a valid title. And thus when

long enjoyment, and the tacit acquiescence of all other interested parties, are proved, then, whatever the nature of the conveyance, grant, or transfer, which is necessary to pass the thing in question directly, may be, the law presumes that it once existed, and was, in fact, the commencement of the title in dispute.

Prescriptive rights are of two kinds: one is a personal right, which has been exercised and enjoyed by a person and his ancestors; the other is a right attached to the ownership of a particular estate, and is only exercisable by those who are for the time being possessed of the estate. The first is called prescription in the person, and with this we have nothing to do at present; the second is called prescription in a *que* estate; that is, a right claimed by prescription as going along with the possession of particular lands, houses, &c.¹ And when this is relied upon, it is always required to be supported by proof of repeated and peaceable use or enjoyment of the thing in question, without which no mere *claim*, however long continued, will ever suffice to establish it. Nor should prescription be confounded with custom, for the former is a *personal* usage, and is always annexed to some particular person; whilst the

¹ Shelford, Real Prop. stat. 55.

latter is a *local* usage, or a local unwritten law, governing *all* the inhabitants of a particular district. For instance, if there is a usage time out of mind in the parish of A, that all the inhabitants of it may dance on a certain field at all times for their recreation, this is a custom, *for it applies to the place in general*, and not to any particular person; but if the owner in fee of the manor of B alleges that he, and all those who have had the same estate before him, have used time out of mind to exercise a right of common of pasture on such a field, this is a prescription, for it is a usage annexed to the person of the owner of the estate for the time being¹.

Formerly an alleged prescriptive right was liable to be defeated, by shewing that the usage commenced at any time subsequent to the reign of Richard I.; for as human memory is curiously supposed by the common law to be able to reach back to that period, it would not in the eye of the law be an immemorial or time out of mind usage, if it commenced at any later date. But since the statute 2 and 3 Wm. IV. c. 71, was passed, (which is called an "Act for shortening the time of prescriptions in certain cases,") where there has been an enjoyment of

¹ Stephen. Comm. 35.

any way or *other easement*, &c., by a person claiming a right to them, without interruption, for twenty years next before the commencement of any suit upon the subject, the prescriptive claim shall no longer be defeated, (as it formerly might,) by showing that the enjoyment commenced at a period subsequent to the time of Richard I. This provision, however, is not meant to interfere with any other kind of objection to the claim which might have been taken before this act passed. But when there has been an enjoyment for a period of forty years, the claim is to be held absolute and incapable of being defeated, unless it distinctly appears that such enjoyment took place under some deed or written consent and agreement, negating the notion (which is an essential ingredient in a prescriptive title) that he who has enjoyed the thing in question has done so under a CLAIM of actual *independent right*.

This is a general outline of the nature and evidence of a prescriptive claim. I proceed to consider these rules in connexion with the particular head of pews. Where a prescriptive title to a pew was sought to be established before the passing of the Prescription Act, already alluded to above, after evidence of long peaceable enjoyment and user of it, unexplained, and acquiesced in by those who were interested

to interrupt it, the courts of common law presumed that a faculty of appropriation had been granted and lost. Not indeed, that the courts always think that a faculty has in such cases been in point of fact obtained, but they choose to presume the fact for the purpose, and on the principle, of quieting possession. The practice of presuming deeds from long usage is adopted by the law for the promotion of substantial justice and peace, where there has been a long exercise of adverse rights: as for instance, it is absurd to suppose that a man would allow his neighbour to obstruct the lights of his windows, or use a way over his meadow with carts, &c., for twenty years, unless some agreement had been made to that effect, of which the usage is evidence; in which case, though the deed may not be forthcoming, yet justice will be in most cases furthered by presuming that a grant was once made and has been lost. No particular period of enjoyment, however, was fixed by the courts as furnishing either *prima facie* or conclusive evidence of the right, but each case was treated according to the force of its own particular circumstances. Thus the evidence tendered, and held sufficient, varied from proof that the pew had been repaired and occupied beyond the memory of living witnesses by the claimant and his predecessors, in the same

dwelling-house, to proof of mere occupation for a period, of which the commencement was within the memory of man, and without any other evidence of reparation, or acts of ownership.

But since the passing of the act for shortening the time of prescription in certain cases, the amount of evidence necessary to support a prescriptive title to a pew will, I apprehend, be measured according to the provisions of that act. The act does not, indeed, expressly mention pews by name, but it purports to shorten the time of prescription in all cases of *easements*. Now a pew, so far as it is recognized by, and a subject of litigation in, the common law courts, is considered to belong to the class of easements. The general meaning of an easement is a convenience, unaccompanied by pecuniary profit, which a person enjoys in or over the land of another. For instance, a right of way, or a right to a channel for waste water over a neighbour's field, are easements, distinguishable from all those other incorporeal hereditaments to which a profit is attached, such as the right to feed cattle, or cut turf from the land of another. It is well known that the freehold of the soil on which a parish-church is built is vested in the incumbent, from which it follows that the highest property which a parishioner

can have in a pew, must be something inferior to the freehold, inasmuch as that is already disposed of. The right to a pew is in fact no more than an exclusive right to kneel, stand, and sit, during divine service, (not at all times, for the incumbent and churchwardens may exclude the pew-holder at other seasons at pleasure,) upon the spot in question. This right obviously falls under the definition of an easement as stated above, for it is a convenience which one person has a right to enjoy, without any pecuniary profit, on, or over, the surface of the freehold land of another. Thus it has been said by an eminent judge, Lord Tenterden, that "in no case has a person the right to the possession of a pew, analogous to the right he has to his house or land, for trespass would lie for injury to the latter, but for intrusion into the former the remedy is by action on the case. That furnishes strong reason for thinking that the action is maintainable only on the ground of the pew being *annexed to the house as an easement*, because an action on the case is the proper form of remedy for disturbance of the enjoyment of any easement annexed to land, as for instance, a right of way," &c.¹ And again in the same case, Mr. Justice Holroyd re-

¹ *Mainwaring v. Giles*, 5 B. & Ald. 362.

marked, that "the mere right to sit in a pew is not such a temporal right, as that in respect of it an action at common law is maintainable. Where a right is annexed to a house in the parish, an obstruction to that right is a detriment to the occupation of the house, and I apprehend it is only on account of the pew being annexed to the house that the temporal courts can take cognizance of an intrusion into it."

Besides, it must be borne in mind that the common law courts have sole jurisdiction over litigated claims to pews of this nature; and as I think it is impossible to refer such cases to any other class of rights known to the common law except that of easements, it follows that this right upon which those courts adjudicate, must be in the nature of an easement.

Assuming, therefore, on this authority and for these reasons, that the right to a pew annexed to a dwelling-house is in fact an easement in law, the proof of a prescriptive title to it will in all cases which may occur subsequently to the 2nd and 3rd Wm. IV. 71, be materially affected by that act. When the uninterrupted enjoyment and use of it, by a person who claimed to do so as of right for twenty years, is proved, the title is *prima facie* complete; subject, however, to be defeated in any way in

which it might have been defeated before the act passed, except by showing the commencement of the usage within the time of legal memory. But where the right has been so exercised for forty years, the title will be held absolute and indefeasible, unless the enjoyment has been had by virtue of a written consent, or agreement, which can be produced to prove the fact. But it must also be observed that in some cases of litigated rights to pews, evidence of reparation by the claimant is essential to support the right, in addition to that of continued enjoyment, whilst in others, which will presently be distinguished, no such proof is necessary.

Such is the general nature of a faculty, and of a prescriptive title to a pew. It is in these two cases, and under these circumstances, that the special rights of particular individuals may lawfully obstruct the power of the ordinary, and consequently defeat a claim for sittings preferred by a new parishioner. The production of a faculty, granted by himself or his predecessors, estops the ordinary, because by that instrument the power that was entrusted to him over the space occupied by that faculty-pew has been parted with; and where a prescriptive title is proved, the result is the same, because though no faculty is produced, it is inferred

that one formerly existed. But it must always be borne in mind, that with the exception of these two cases of faculties and prescriptions, the power of the ordinary, as protector of the parishioner, is paramount over every part of the body of the parish-church.

Where a faculty actually exists, and the instrument runs in the usual form, there is seldom any litigation about the right of the grantee to the exclusive enjoyment and possession of his pew. It is therefore not worth while to enter more fully into the details of this class of cases.

But in cases of supposed prescriptive rights, questions often arise as to whether under all the circumstances there are sufficient grounds to support the claim. Suppose, first, the case of a pew claimed by virtue of an alleged prescriptive title, but which the ordinary, not admitting or regarding the supposed prescription, proceeds to allot and dispose of in the exercise of his regular powers ;—what, under these circumstances, is the proper mode of settling the question ?

Whenever disputes arise with respect to the rights to pews, it is generally true that the ecclesiastical courts have jurisdiction over all suits touching such matters. But though they may, strictly speaking, entertain *all* such suits, yet when prescriptive rights come in question,

a prohibition will be granted on the application of either party to the superior courts of common law, staying the proceedings in the ecclesiastical court, for the purpose of transferring the dispute to the court which issues the prohibition, to be tried by means of a jury. If, indeed, a libel in a spiritual court were grounded upon a prescription, *and that prescription were not denied*, the court might proceed to adjudicate upon it, and the suit would not be *coram non judice*. But *where the prescription is denied*, the spiritual courts are not allowed to adjudicate upon that issue, because, as their rules touching prescriptions and customs differ from those of the common law, a prescription affecting the inheritance of a person might be held good in the former, whilst it would be invalid in the latter, and so uncertainty (which the law abhors) be introduced into the legal rules which regulate inheritances.

Whenever, therefore, the prescriptive right is denied, the suit is always transferred to one of the courts of common law, to be there determined according to the forms of that court. Let us suppose, first, that the prescriptive right is denied *by the ordinary*; for in this case the evidence required to support such right differs in some respects, as will be seen hereafter, from that required in the case of a dis-

pute between private individuals. A claimant cannot succeed against the ordinary, without stating in his declaration, and supporting by evidence, the three following propositions. First, it must be alleged and proved that the pew in question is annexed to a dwelling-house in the same parish, occupied and inhabited by the claimant ; and, secondly, that whenever there has been any necessity for reparation, he, or those who have been occupiers and inhabitants of the said house before him, have repaired the pew at his or their expense. He is bound to allege that the pew is annexed to his dwelling-house, because (as has been already shown) it is only on the ground that an obstruction to the peaceable enjoyment of a pew so annexed is a detriment to the enjoyment of the house, that the courts will entertain the cause at all. For example, in an action on the case against a mere wrong-doer, for disturbing the plaintiff in a pew, tried in 1786, where the right to the pew was not laid as appurtenant to a messuage in the parish, but was only supported by evidence of possession for sixty years, and an attempt to derive a title from a person whom the churchwardens had allowed to build the pew in 1718, the plaintiff was nonsuited at the trial, and the court of king's bench held the nonsuit right, and said, that "if

the plaintiff will not take the trouble to apply to the ordinary for a faculty, or to the minister and churchwardens to allot him a seat, he cannot maintain this action, though against a wrong-doer, *because he has not set forth that the pew is appurtenant to a messuage in the parish,*" &c.¹

Secondly, the plaintiff must allege and prove, in an action against the ordinary, that if any repairs have been required within memory, they have been executed at the expense of himself or those under whom he claims, because it is in consideration of the relief of the parish from so much expense, as might be incurred in repairing the pew, (which, *primâ facie*, the parish is bound to do,) that the ordinary, as conservator of the privileges of the parishioners, is allowed to be divested of his usual power. "It must be shown," said Sir J. Nicholl, "that if acts have been done by the inhabitants of such a messuage, they have maintained and upheld the right. At all events, if any repairs have been required within memory, it must be proved that they have been made at the expense of the party setting up the prescriptive right. The onus and beneficium are supposed to go together—mere occupancy does not prove

¹ *Stocks v. Booth*. 1. T. R. 428.

the right. It is a common error to suppose that by mere occupancy pews become annexed to particular houses; in country parishes the same families occupy the same pews for a long time, but I apprehend they still belong to the parish at large. If, however, it is *shown that the inhabitants of a particular house have repaired*, that fact establishes that the burden and the benefit have gone together, and is inconsistent with the right of the parish still to claim the benefit, and is evidence of the annexation of the pew."

Lastly, he must prove a sufficiently long, uniform, and exclusive possession of the pew by the inhabitants of the dwelling-house to which it is alleged to be appurtenant, which, in connexion with the two previous points, and in the absence of contradictory evidence, will completely establish the supposed title. The power of the officers of the church must now give way, nor can they further interfere with the plaintiff or his successors, being inhabitants of the same house, however seldom they may choose to exercise their exclusive right to their pew.

But suppose, in the next place, the case of a person who claims a pew on the ground of a prescriptive title, disturbed in the exclusive occupation of it by one who has no ecclesias-

tical authority to do so, and who only desires to dispute the right, and obtain the best accommodation he can for himself. In this case, the aggrieved party may bring an action on the case against the disturber in the common law courts, alleging a prescriptive title in himself. Here, as in the last case, the plaintiff must set forth that the pew is annexed or appurtenant to a dwelling-house in the parish inhabited by him. But he is not required, as in a suit against the ordinary, either to allege or prove, that he or his predecessors have ever done necessary repairs to the pew. The reason of this difference is, that in the former case, the supposed disturber was a person possessed of legal authority, *prima facie* extending over the seat in question, every exception to whose power is in derogation of the rules and policy of ecclesiastical law (which desire to effect the accommodation of all the parishioners), and must, therefore, be strictly proved to be not inconsistent with the general rights, which is done by requiring proof that the claimant is an inhabitant of the parish, and has relieved the parish from the expense of repairing the appropriated pew. Whereas in the latter case, long continued possession in connexion with the occupation of a house in the parish is considered sufficient ground of title against one who

has no power to seat himself, and is regarded as an intruder and wrong-doer until he shows some superior title in himself.

Such is the course to be pursued when a prescriptive claim is set up. . If it is established when disputed by the ordinary, it is good against all the world ; though the converse may not be true ; as it does not follow that if it is held to be established as against a mere wrong-doer, it would always be valid against the ordinary. When this title, however, is fully proved, it is material to remember that it is perfectly exclusive in its nature, and enables the owner to shut out every other person from worshipping on that spot of ground, whether he chooses to worship there himself or not.

There is one other case, in which, in setting forth a prescriptive title to a pew, it is not necessary to allege reparation. It is where a person prescribes for a seat in an aisle. Here, even in a dispute with the ordinary, it is not essential to allege in the declaration that the claimant has done any repairs. For, in the first place, the law regards aisles, chapels, and lesser chancels as minor parts, or adjuncts only of churches, and as differing in origin and legal properties from the nave or body ; and in the next place, it considers that the title may be derived from the circumstance of the claimant

or his predecessors having been the founders of or contributors to the building of the aisle; and hence it liberally presumes that the claimant does repair, without requiring from him an allegation of that fact.

Over all other suits connected with pews, the ecclesiastical courts have sole jurisdiction¹, and an inferior title to that of prescription is sufficient to enable a person to sue successfully before these tribunals. For the principle of their jurisdiction and judgments is quite different from that of the courts of common law, inasmuch as they take cognizance of, and have for their object, the reformation of men's manners, and the good of their souls; and in matters connected with pews, they look to the maintenance of decency, order, and propriety in the conduct of public worship. A possessory title, therefore, founded upon a mere recent allotment of the pew by the churchwardens, and unconnected with any evidence of reparation or long enjoyment, is sufficient title on which to maintain against a disturber a suit, technically termed a suit for perturbation of pew. For the very fact of possession implies the actual or virtual authority of those who have the power to place the occupier, and this authority will be pre-

¹ Report of Ecclesiast. Commission.

sumed by the ecclesiastical courts to have been exercised in favour of the party in possession, until some paramount title is proved by the disturber.

It does not appear to be well settled whether this inferior title is valid as against the churchwardens for the time being, should they attempt to displace a person to whom a seat has been allotted by themselves or their predecessors. At all events, it is clear that it is of no avail against the ordinary, to whom the churchwardens are at liberty to refer all such disputes.

Having thus briefly considered the titles to pews, and the remedies for alleged perturbation in them, I now come to some peculiar properties or incidents belonging to them, which, as they are unconnected with the foregoing points, must be enumerated independently and separately.

In the first place, it is a well-established proposition that a church-pew can neither be sold nor let, directly or indirectly, by the ordinary, the churchwardens, or any private individual, nor can any custom or consideration possibly legalize such a transaction¹. The reason is, that all seats in a church belong to

¹ 1 Hagg. Consist. Rep. 318.

the parish for the use of its inhabitants; and therefore if a person, entitled by prescription to a pew, ceases to reside in the house to which it is annexed, it passes with the house to the succeeding tenants for the time being, who, by virtue of inhabiting there, have the same prescriptive right to the pew as their predecessors had before them. For when a pew is appurtenant, or annexed to a house, it cannot by any contract or contrivance be legally severed from it by the owner, and even a covenant on the part of the tenant of the dwelling-house that he will not use the pew annexed, in order that the landlord may let it separately, cannot be supported¹. So if a person has only a possessory title founded upon allotment, and he ceases to be an inhabitant of the parish, his right is at an end, and his pew reverts to the churchwardens, who may allot it again. Indeed, if it were otherwise, all the seats in a church might gradually be abstracted from the parishioners, and get into the hands of strangers to the district. And, therefore, as such transactions are positively opposed to the spirit and policy of the ecclesiastical laws, it is necessary in order to enable either the officers of the church, or any other person to sell a pew, to obtain a special act of parliament for that purpose.

¹ *Walter v. Gunner*, 1 Hagg. Rep. 314.

An authority for this position is furnished by a recent case, where the vestry-clerk of a parish had been in the habit of selling pews, in reference to which practice Sir J. Nicholl said, in delivering judgment, "It is from beginning to end an illegal transaction, and can furnish no ground of title. The money paid can only be considered as voluntary contributions and subscriptions towards the building. . . . The sale and purchase do not improve, they rather operate against the claim; for if a party seek to found his claim on an illegal origin, it goes far to justify his removal¹."

Neither can a pew be let, even by the owner of a house with a pew annexed to it, to a person who does not inhabit that house. "It is an abuse," says Lord Stowell, "which cannot be maintained, for use cannot be made of pews as of villas, or other common property²."

Again, the right to sit in a pew may be apportioned, or divided, which means that the right of one person or family to a whole pew may, under some circumstances, fall into the hands of two persons or families, if the pew is capacious enough to hold them. For example, where a faculty was granted to the owners and

¹ *Wyllie v. Mott*, 1 Hagg. Ecc. Rep. 29.

² 1 Hagg. Const. Rep. 321.

occupiers of a certain dwelling-house, and that house was afterwards divided into two, it was held that the occupiers of one of the two, though it constituted a very small part of the original messuage, had some right to the pew, in virtue of which he might maintain an action against a wrong-doer¹.

So the right to sit in a pew may not only be apportioned, but *priority* in a seat may be prescribed for, and an action on the case, or suit in the ecclesiastical courts, lies for disturbance of it².

The aisles, lesser chancels, and chapels, when such adjuncts to the nave exist, are often excepted from the general rules which regulate the body of the Church, and thus the freehold itself of those parts may become vested in others than the incumbent. Where an aisle or chapel adjoining a church has been, time out of mind, annexed to a house, and repaired by the owners of it, the law takes for granted that it was built by their predecessors, and vests the freehold in them, and neither the ordinary nor churchwardens can interfere with the seats in it. Hence it happens that persons resident in another parish may prescribe for a seat in an

¹ Harris v. Drewe, 2 B. & Ad. 164.

² Carleton v. Hutton, Noy, 78.

aisle as a personal privilege; or a seat there may also be claimed as appurtenant to a house out of the parish.

The law is not so well settled with regard to the great chancel, as in other points¹. Some think that the ordinary and churchwardens have no power at all over that part of the edifice. Others assert that the parson has the right of disposing of the seats in that quarter on the ground that it is his freehold, part of his glebe, and that he is bound to repair it. Neither reason seems satisfactory or decisive; for the body of the church is also the freehold of the parson, and yet the ordinary disposes of the seats there; and with regard to reparation, by the canon law (which is the common law of the church), he who receives the profits of the church is bound to repair the whole of it; and although custom has in England transferred the duty of repairing the body of the church from the parson to the parishioners, it is still the duty of the former to repair the church, which seems to be an insufficient consideration for allowing him to dispose of the whole of the floor of it. Claims have also been set up on behalf of the vicar; and at least it may be said that the power of the ordinary in this quarter is questionable and obscure.

¹ Report of Eccles. Commission.

In some places custom and usage have transferred the power of disposing of the pews from the ordinary to the churchwardens and the vestry; and in others to a particular number of the parishioners, contrary to the general rule which excludes both the parishioners at large, and the vestry, from any share of this power¹. But the bare fact that the ordinary has not acted, will not transfer this power to them, for no occasion for his interference may have previously arisen. And a custom for churchwardens alone to place and displace persons in and from pews independently of any other authority, is bad in law, unless some particular reason can be assigned for it, and then it may sometimes be supported².

Pews ought not to be built without a faculty from the ordinary, or, at least, without the consent of the minister and churchwardens; and if they are erected without such permission, they may be pulled down by order of the bishop or archdeacon, or by the churchwardens, under the authority of the parson. Nor can pews already erected be pulled down without the consent of minister and churchwardens, except under a license or faculty from the ordinary³. For

¹ Gibson, 198.

² Watson, 712.

³ 2 Roll. Rep. 24.

“all persons ought to understand,” says Sir J. Nicholl, “that the sacred edifice of the church is under the protection of the ecclesiastical laws as administered by these courts, &c., and that pews already erected cannot be pulled down without the consent of the minister and churchwardens, unless, after cause shown, by a faculty or license from the ordinary¹.” But trifling alterations may be made without a faculty, unless any prescriptive right is infringed, the church disfigured, the parishioners incommoded, or made liable to additional rates. And if a pew is unlawfully set up, and afterwards pulled down, the materials belong to the incumbent, because they have been affixed to his freehold². The theory of the freehold being vested in the incumbent, and the corporal possession of the edifice in the incumbent and churchwardens, accounts for the necessity of obtaining their permission to erect or pull down a pew, when a faculty has not been obtained. For no one has a right to enter the church, except during divine service, without their permission and authority, and they are in a condition to maintain their possession against any intruder at any other season.

¹ Jarrett v. Steele, 3 Phill. Rep. 169.

² Stark. on Ev., 3rd edit. 866.

It may be advisable to add, before this chapter is brought to a close, that the churchwardens, as the officers upon whom the duty of distributing the seats generally falls, are not left by the law without some general rules for their guidance. "The general duty of churchwardens is to look to the general accommodation of the parish, consulting, as far as may be, that of *all its inhabitants*. The parishioners have indeed a claim to be seated according to their rank and station, but the churchwardens are not, in providing for these, to overlook the claims of *all the parishioners to be seated*, if sittings can be afforded them¹."

The case seldom occurs where the churchwardens have to arrange *all* the parishioners afresh, because in general they find the great body of inhabitants already seated, either by prescription, by custom, or by the allotment of their predecessors. Such claims and arrangements they ought to respect, so long as they can do so without excluding others. But where existing arrangements do not meet the exigencies of the parish, they are bound to keep pace with the times, and to make such a new distribution as will enable them to seat the greatest possible number, respecting possessory rights

¹ Fuller v. Lane, 2 Add. Rep. 424.

(that is, rights derived from the allotment of former churchwardens) only so far as to give the person in possession a preference over a mere stranger.

It is obvious that *some principle of arrangement* must be adopted when the inhabitants of a parish are to be seated afresh, as in the case of a church newly pewed or rebuilt. The principle countenanced by the ecclesiastical laws, with a view to prevent quarrels and contentions in the church (which would certainly take place if there were no rule of arrangement at all) is clearly this ; that, after allowing all prescriptive and faculty claims, the churchwardens ought to place all the other parishioners, not high and low, rich and poor, together, as they put in their claims in the order of time, but *according to their rank and station*, not accommodating the higher classes with more room than is really necessary for them, to the exclusion of their poorer neighbours, but giving them at the same time a preference over the latter, if the seats are not equally convenient¹. Consideration is also due, and must be paid, not only to rank and station, but also to the number in each family, in order that they may be enabled to worship together, and also to the particular

¹ 2 Add. Rep. 434.

circumstances of each parish in reference to church-room¹. Rules more precise than these cannot be expected to be laid down ; but, bearing in mind that the object to be gained is the general accommodation of *all* the parishioners, the conduct of the churchwardens must be guided by this landmark, and any deviations from fair dealing, any negligence or partiality, are open to be reviewed and corrected by the Ordinary and the ecclesiastical courts.

Lastly, it must be observed, that the general principles which have been stated with regard to pews in parish churches are not applicable to those in modern churches, which have been built under the provisions of several recent statutes for building additional churches in populous districts. With regard to this class of pews, the law is different in many respects, and particularly with reference to the letting of them.

By the 58th Geo. III. cap. 45, sec. 76, subscribers to the building of the church are to have their choice of pews, at certain rents fixed by the commissioners, in the order of the amount of their subscriptions ; they are to be let or sold only to parishioners, the contract to continue whilst they remain inhabitants of the

¹ Report of Eccles. Commission.

district; and the commissioners may fix the amount of the pew-rents, the produce of which is to form a fund for the minister and clerk.

But by the section 75, one-fifth at least of the whole of the sittings in such churches as shall be built, wholly or in part, out of any rates, or out of money raised on the credit of rates, are to be appropriated for ever to the poor, and marked "free seats."

And by 3rd Geo. IV. c. 72, s. 24, any *surplus* pews may be let from year to year to non-parishioners, if there is not sufficient accommodation in the churches or chapels of the parishes in which they reside. These are the general provisions of the legislature which affect the sittings in new churches. It might, perhaps, not be useless to enter more into detail on this head, but as the particular statutes under which such churches are built, are of easy access to all who are concerned with them, I will not pursue the subject further. I will only observe, that all such churches and chapels afford peculiar facilities for introducing the best method of accommodating the congregation, as they are free from those prescriptive and other special rights which exist, more or less, in almost every old church.

Having now pointed out the general rules which affect the distribution of seats in old

churches ; the powers of the officers of the church, and the excepted cases over which they have no control ; the nature of a faculty and a prescriptive title ; the modes of redress for obstructions in the enjoyment of pew-rights, and the tribunals to which they must be referred ; some minor rules which are also recognized by law ; and the general duties of churchwardens as suggested by the courts from time to time ; I have completed this part of my task : and hoping that this sketch may serve to give those who read it a clear view of the legal incidents connected with pews, and prevent them from falling into mistakes which are of frequent occurrence, I pass on to the consideration of the advantages and disadvantages of pews, without any immediate reference to their legal properties.

CHAPTER III.

EXPEDIENCY OF ABOLISHING PEWS AND SUBSTITUTING OPEN BENCHES.

Exigencies of the Church with regard to accommodation, and the facilities for increasing it by the alteration of church-seats—Some examples pointed out—Probable opposition in vestry to the abolition of pews—Arguments and topics suggested in answer to such opposition in vestry—The exclusive appropriation of pews drives the poor from the church—This statement illustrated by reference to the general state of congregations in English churches—The Church of England no longer the poor man's church—Pews with "free sitting" marked upon them not a satisfactory arrangement—The shape of existing pews often inconvenient to the worshippers—Exclusive appropriation greatly diminishes the amount of available accommodation—Pews shelter the irreverent, injure the appearance of churches, and often lead to parish quarrels—Suggestions for remedying these evils by the adoption of open benches, in which everybody might be seated and nobody excluded.

THE great body of English churchmen have slumbered in their pews from generation to generation, without even dreaming that their

wooden walls would one day be assaulted and overthrown. In the good old-fashioned times, when the Church herself grew somnolent, they built, locked, curtained, lined, and cushioned their private boxes, without thinking that their innovations could ever be either mischievous or obnoxious. It is true, that from time to time isolated individuals have borne witness against them, but they failed on many accounts to have any influence over the prevalent fashion. The beautiful parish-churches of England were for the most part built by our poor forefathers (who looked beyond themselves) of dimensions large enough to contain a far greater population than was to be found in the land ; and for ages, no matter what the furniture of the edifice was, all who would come could worship there. There were also other reasons in former times which served to perpetuate pews, to which I have alluded already in another page. But the case is different now. It is well known that the population has so prodigiously outrun the capacity of the churches to contain it, that the extraordinary number of churches which have been lately built, so far from regaining the lost ground, has barely kept pace with the growth of population since the church-building spirit was awakened. The real deficiencies of the church are as alarming as they were thirty

years ago. Under these circumstances, therefore, all the shifts of lofts, theatre-like galleries, and benches without backs in the alleys having been exhausted, men have begun to consider whether more room may not be obtained in churches by a new arrangement of the interior, which should also be agreeable to that better taste which the revival of knowledge in ecclesiastical architecture is widely extending.

Some examples have already been given of a complete relinquishment of pews and pew-rights, and a return to the more rational and useful fashion of former times. The Temple church, which was entirely filled with close pews up to 1840, has been fitted up with open benches and stalls, which admit of the bases of the beautiful supporting columns being exposed to sight, and offer the least possible obstruction to the view that is compatible with the necessary accommodation of the congregation. Chesterfield church, which is a very fine structure, is another instance of this reform: St. Mary's, at Beverley; St. Mary's, at Stafford; and St. Sepulchre's, at Cambridge, are also examples of the same.

Now it is almost certain, that whenever the abolition of pews is proposed in a parish, there will be considerable opposition to the proposal at the first. Those who really have special

privileges will desire to retain their own, and others who have no well-founded right, but merely equivocal claims, will be equally tenacious with the former. The proposed destruction of barriers and distinctions between rich and poor, will be regarded by many as a revolutionary movement, and denounced as contrary to the ancient custom of the Protestant Church.

On the other side, the argument will be conducted perhaps without a sufficient knowledge of the legal incidents and rights connected with pews; the grievance of them will perhaps be exaggerated, and sometimes even a ludicrous degree of importance unduly imported into the discussion. For instance, when it is gravely stated (as it has lately been), as one reason for getting rid of pews, that "they were a part of the wicked system of those men who murdered their anointed sovereign King Charles the martyr, and overthrew for a time the Church, and brought all kinds of miseries on the kingdom," and again, "that pews, unless they have a faculty, which very few have, are illegal," the warfare against pews is invested with an air of Quixotism and legal ignorance.

For my own part, I merely desire to state briefly those objections to pews which appear most forcible and practical; bearing in mind at

the same time the acknowledged legal rights connected with them, and noticing also such few considerations as may possibly be urged in their favour.

No person, I think, can have read the last chapter, without coming to the conclusion that there are some serious difficulties in the way of abolishing pews. It has been shown, that there are some titles to pews so firmly established, that nothing but a special act of parliament can over-ride them, unless the right is abandoned by the privileged party himself. And it is also clear, from those practical rules which the ecclesiastical courts have suggested for the distribution of church-seats (rules which, though an unwilling witness, I am obliged to state), that the distinctions of aristocracy, rank, class, wealth, and station, have eaten their way into the very heart of the Church. To these absolute rights, and distinctions of classes within the church, add the satisfaction derived from sitting in a pew better lined and ornamented than its neighbours, the supposed propriety of keeping the poor or "lower classes" at a distance from the rich or "respectable people," and the bodily comforts of such luxurious accommodation, and we shall then have all the most weighty considerations which old-fashioned people who still support pews can ever urge in their favour,

and it must be admitted at once, that some respect is due to them. For if it is proposed to abolish pews and restore open seats in any church, it is plain that the obstacles of faculties and prescriptive rights must first be surmounted, and the great pews given up ; and those prejudices which may exist in favour of close exclusive seats, arising out of the extraordinary and unnatural distance between the rich and poor, must first be overcome. These objections and difficulties would, of course, be met partly by such common arguments in favour of the proposed reform, as would apply to all similar cases ; and partly by special considerations applicable only to the circumstances of that particular case. With the latter I have nothing to do in this work, and I shall therefore confine my attention to such practical and common topics as would suggest themselves to the proposer of the reform in question. Suppose, then, the inhabitants of a parish to be assembled in vestry, where it is admitted on all hands that their church, under the present arrangement, is no longer capable of receiving those who ought to come to it, and the question to be proposed for their consideration,—Will you consent to let all your pews be pulled down, forego your prescriptive and faculty rights, give up your square family pews, and allow the

church to be so new-seated, as to waste no space, and give no surplus room to any one? What are the practical and common topics that would be used in pressing the parishioners to assent to this alteration?

The first, and certainly the most important consideration that could be urged, is, that exclusive pews naturally tend to expel or keep away the poor from the church. The office of the church is the cure and salvation of souls, and every consecrated edifice ought to remind us that each soul is entitled to an equal share of her advantages and care. The furniture and the arrangements of churches ought to suggest the idea that they are common ground, and that neither the Founder nor the ministers of our religion are respecters of persons.

The condition of the poor should be called to mind. They are closely tied down in the world by their circumstances; they rarely see the slightest prospect of ever tasting the supposed pleasures of opulence and power; their life is generally a constant repetition of labour, with old age or sickness unprovided for in prospect. Is it not then desirable that they should be made to feel that there is one place at least into which the world and its artificial relations and distinctions do not enter, where poverty and mean apparel will not exclude them, and

where money and rank cannot purchase privileges? We have a right to expect that the guardians of the church will exert themselves to make that society an actual type of better and future times, and to receive all comers, whether high or low, rich or poor, within the sacred walls, on the same equal terms on which we are taught they will be received hereafter. They ought not to teach the faith with respect of persons. "For if there come into your assembly," writes St. James, "a man with a gold ring in goodly apparel, and there come in also a poor man in vile raiment; and ye have respect to him that weareth the gay clothing, and say unto him, Sit thou here in a good place; and say to the poor, Stand thou there, or sit here under my footstool; are ye not then partial in yourselves?" Indeed, it cannot be denied that the general aspect of a church ought to teach the lesson that all who worship there are *members of one body*, to which end the floor ought to be preserved as common property, in fact as well as in law, for all the inhabitants of the district, and be so *equally* furnished throughout as to preclude the possibility of any visible line of demarcation being drawn between those who are aristocratic, powerful, or wealthy, and those who are dependent and poor. It needs no argument to

show, for every one will admit, that it would be positively wrong and cruel to place a mark of degradation upon the seats of the poor, because it would be fostering the pride of the rich in the house of God, and wounding the feelings of the poor where they look for comfort.

Now it is to be feared that the churches of England do not accord with these views. It is certain that in the churches in London and in most towns, the rich are seated in pews, while the poor are compelled to stand or sit in the aisles, exposed to drafts, stove-heat, and every possible inconvenience. He who has money to buy accommodation with, can almost always command it, while he who has none is treated without the slightest attention to his convenience. In fact, these churches exhibit the very grievance which St. James so forcibly censures. If a poor ill-dressed man walks into a town-church, no one thinks of offering him a seat; no door is opened for him; no place pointed out to him. The world is evidently in possession of our churches, for rank and family-pride and wealth have all their usual marks and distinction within as well as without. There is no possibility of leaving the world behind us when we enter the sacred building. In the church of St. Martin in the

Fields there is a box or closet in a gallery *with windows in front*, which open and shut at the pleasure of the noble occupier. In villages too the case is often no better. In most village churches are seen some very large square pews on each side, beginning at the chancel-arch, annexed to some farm-houses, and to the mansion of some absent squire. Further back you find the smaller pews occupied by the smaller tenants and little freeholders ; and lastly, furthest from the minister, pulpit, and communion table, under the gallery, in the darkest and coldest place in the church, the poor, the old and infirm, are *accommodated*. Sometimes stoves and tables are introduced into the great man's pew, which in addition to his crimson curtains, brass rods, and soft cushions, make a kind of small sitting-room for the family. And after all, the squire is probably often absent with his family, and then no one dares to intrude into his pew, any more than into his library or his garden. The farmers are perhaps not all of them churchmen ; but though they rarely occupy them, they never relinquish their pews. The clergy are sufficiently alive to the evils of such arrangements, but they too often want influence and resolution to support the weak against the strong parishioners. In town-hurches also, it is too common to find that

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some rich professional parishioner has been sanctioned, or at least not obstructed in making a monster pew, by absorbing two or three old pews into one, which, when it has been decorated in the most expensive fashion, serves to distinguish him from the rest of the congregation.

These are specimens of the respect of persons which prevails in the churches of England. Can it be wondered at that such practices have done much to alienate the affections of the poor from that Church? By these means they are almost literally shut out. The law tells them that the floor of the church is common ground; but this, like many other things, is in reality only a pleasant legal fiction. Yet they are not so dull as not to know that the English clergy are appointed for the cure of all souls with equal diligence within the limits of their charge, that one soul is as precious as another in the sight of God, and that the accidents of wealth and rank can attach no spiritual value to one above the other. Can it be a matter of surprise, then, that when, knowing all this, they find the churches of England furnished and arranged on a system diametrically opposite to these truths, they turn their backs on her, and go to those schismatical places of worship where all are on a level? It is in vain to call the Church

of England the poor man's Church, whilst upon her present system she is emphatically the Church of the rich; and I believe it may be safely added, that there is no other Church in existence which favours the respectable and rich at the expense of inconveniencing the poor. It is certain that the Roman Catholic Church recognizes no such system in her various establishments; all her members are on a level within the sacred walls; and that is the only Church that I am acquainted with, which affords a vivid idea of a congregation "falling down and worshipping before the Lord their Maker." And this is probably one cause of the warm and hearty attachment which the humble and ignorant classes of Roman Catholics often entertain towards their mother Church, who has no pets and favourites, but distributes her benefits, so far at least as the present question is concerned, equally amongst all her children. Her members stand and kneel upon the floor which is still common to all of them, whilst here the floor, which ought to be the "common" of the parish, has been inclosed, fenced in, and appropriated by the same class who inclose the common of pasture, and the poor commoners are warned off from trespassing under the pains and penalties of the law.

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But it may be said that "free seats" are now very generally adopted in our churches, and that where grants are made by certain societies, it is upon condition that a proportion of the pews built with their assistance shall be marked, and be for ever "free." But this very circumstance of marking such pews is an objection to the plan, for it is in effect a badge of poverty; the "free seats" are generally in the worst situation in the church; they are visibly distinguished from the seats of owners and lessees; and it is therefore not unnatural that this kind of accommodation should be objected to and slighted by the poor, and should furnish no adequate remedy for the evils complained of.

In whatever point of view, therefore, this topic is treated, whether in reference to the manifest impropriety of respecting persons in the church; or to the lesson that is to be derived from the congregation presenting the appearance of one body without any distinction; or to the social disadvantages of making the poor continue to feel their worldly situation in the very house of God; it is clear that the present system of church-pews needs some reform.

But this is not all. There are other practical

inconveniences and disadvantages connected with it, which are manifest when they are observed and stated. The principal object in the internal arrangement of churches is to provide the greatest number of persons that are expected to attend them with room to stand, sit, and kneel, during the performance of the various offices of the Church of England. This is attempted to be done by means of close pews, which are small spaces of the floor of various dimensions and shapes, walled in by boarding of not less various degrees of height, and often as high as the top of a person's head when sitting down in them. Sometimes pews are wide enough to admit of two sets of persons sitting *vis-à-vis* to each other on the opposite benches, but in most instances only one set can be accommodated. And in almost all pews, though it is sufficiently easy to sit and stand, the facility for kneeling is too small; for in double pews, when persons sitting on both sides kneel down, they are brought into disagreeably close contact; and in single pews the boarding in front is so high, and the space so narrow, that the attitude of actual kneeling becomes painfully wearisome during the protracted services of our Church. To these circumstances must be attributed the fact, that

when the prayers commence, a large proportion of the English congregations (unlike worshippers in any other country,) deliberately sit down, whilst a few prefer to stand, and the rest half kneel and half sit. And here is one practical objection to pews, inasmuch as they fail to provide ample facility for all persons to kneel, which is one of the essential requisites of church furniture.

Again, the allowance of the *exclusive* possession of pews by particular individuals enables not only ill-disposed and selfish, but merely thoughtless persons, to do much mischief. For pews of dimensions large enough to hold from ten to twenty persons are often annexed to houses occupied by very small families, and may be seen either absolutely empty, or not nearly full. And it seldom happens that he who habitually absents himself from church, or he who has more room than he wants, ever offers to give up to the churchwardens his unoccupied sittings so long as he can possibly retain them. Thus it sometimes happens that dissenters, being entitled to the exclusive use of pews by reason of their occupation of dwelling-houses to which they are annexed, are enabled to keep that portion of the church out of use, and to act the dog in the manger, by neither

using the pew themselves, nor allowing any one else to do so. Others, especially the great families, who have almost invariably the lion's share of the church, are often absent from their homes for long periods together, and during all that time no one ever presumes, nor would any one who durst presume, be allowed to occupy a corner of the great pew. "In this way," says the able Archdeacon of Lewes, "the poor, who, owing to the obtuseness of their senses and perceptions, need to be near to the minister, are driven to the skirts of the church, where only dim broken sounds reach their ears, the connecting links of which they are unable to supply, and where, if they are not altogether out of sight, they can but imperfectly discern those accompaniments of manner, and voice, and gesture, in which so much of the force of preaching lies, and which are especially requisite to persons less familiar with the power of words, and less easily impressed by them." Nothing can be more absurd than to see one large family crammed into a small pew, and a body of the poor people taking refuge in the aisles, whilst there are several vacant spaces in the church entirely unoccupied during the whole service. This grievous and not uncommon sight must be wholly attributed to the

system of close pews, and is one which can never be witnessed in any other churches but our own. So that, if there were no other reason than this state of facts, for a reform in church accommodation, there would be enough here to justify it.

But independently of this consideration, it is certain that a loss of room is caused by furnishing a church with pews, however well they may be filled. A sub-committee of the Cambridge Camden Society has been engaged in an inquiry into the comparative advantages of pews and open benches, as to the numbers they are capable of accommodating; and they state, that the results they have arrived at are strongly in favour of open benches. Churches in and near Cambridge were surveyed in the course of the inquiry, and the grounds for calculation assumed were principally two: namely, that church accommodation should provide for the three postures—kneeling, standing, and sitting; and that about 18 inches is an adequate width of seat from right to left for each person. They first took an area of 42 feet (from E. to W.) by 7 feet 6 inches (from N. to S.), which contained six pews of that description, in which the occupants sit round them, each 7 feet 6 inches by 7 feet. The utmost such a pew will hold to kneel is seven, and therefore the

six pews would hold forty-two persons. But it was found that in the same area seventeen benches might be placed, each holding five persons, or eighty-five in all, and double the number accommodated in the pews. And if those pews were held, as they probably would be, by separate families, the average number of occupants would be considerably under seven, and thus the contrast, which was remarkable before, becomes more conspicuous than ever. The survey of the long pews does not give such a striking result. In one of two churches, however, which were examined for this purpose, fourteen pews were found in a length of 40 feet, and in the same length eighteen benches; and in the other only thirteen pews were found in the same area; so that, in the first instance, by exchanging pews for benches, there is a gain of about twenty-eight per cent., and in the last instance, of about thirty-five. The principal reason of this difference is, that the height of the backs of benches admits of persons leaning upon them from behind when they kneel, and making them their support, and consequently no bench need be wider from back to front than is required for sitting and standing; whilst the boarding of pews is almost always so high as to prevent its being used as a support, in consequence of

which the pew must be made wider than mere sitting and standing require, in order that the occupant may kneel. Upon the whole, therefore, it is an important argument against close pews, that at least *one-fifth* of the available space in the floor of a church is lost by adhering to pews.

Again, the facilities afforded by the high boarding of pews for irreverent behaviour, talking, sleeping, carving names, and all kinds of tricks, are well known to every body. In fact, they offer a temptation to children and ignorant persons to neglect the ritual, and pass the time as amusingly as they can. The officiating clergyman ought to be able to observe every person in the church, which it is often impossible that he should do, on account of the obscure corners in which persons can seclude themselves. The occupants frequently sit and stand opposite to each other, and have the best opportunities they can desire for staring and distracting each other's attention, and interrupting the course of their devotions, which would be almost entirely prevented if all persons sat facing one point of the church.

Nor can it be denied, that the general appearance of churches is greatly deteriorated by close pews. Enter a church on a week-day, and observe how curiously the floor is partitioned

out into boxes of all shapes and dimensions, of different materials, and with various decorations; some old and some new—sometimes inclosing the base of a column, and sometimes hiding the chancel-screen. Or enter the church on Sunday, and observe how the character of social worship is destroyed by it: instead of kneeling side by side, the rich and poor together, each family is fastened up within its wooden partitions, and carefully secludes itself from all contact with its neighbours. In short, I do not think an author on this subject has gone beyond strict truth when he says, "they spoil the look of churches more than any thing else; and thus the house of God, which ought to be the fairest and richest of all buildings, is disfigured to suit the pride and luxury of man." In an architectural point of view, there cannot be any answer to these observations; in addition to which it may be remarked, that pews often conceal unsoundness in walls and pillars which require repairs; that they tend to harbour and hide damp, dirt, dust, and mildew; and that they are very difficult to clean on account of their irregular shapes.

Again, it may be urged that there is no necessary increase of comfort in pews as compared with open seats. It is true, that by being assigned exclusively to particular families, they

may be kept for those families at all times, whether they choose to come or not; but surely this is rather on a topic which ought to be pressed against them, because people are encouraged to come to church when, and as late as they please, knowing as they do that no one will presume to occupy "their own pews." And, with regard to the warmth of them, it is clear that they are often inconveniently hot in warm weather, and in cold seasons they are particularly liable to drafts.

Lastly, pews are the cause of many quarrels and misunderstandings in parishes, almost all of which are attributable to the exclusive appropriation of them, any interference with which is looked upon as a trespass and invasion of rights, the danger and evils of which would be nearly extinguished by furnishing churches in a different manner.

But it may be asked, what remedy can be suggested for the evils pointed out in the system of pews? I reply, the best remedy is to make a strict inquiry into all claims to pews; to obtain, if possible, a waiver and abandonment of such of them as are found to be valid; and then to pull down all the existing pews, and re-furnish the church with open benches. These benches should have backs, admitting of an easy position in sitting, which should at the same

time furnish a support to the occupant who kneels at them from behind. They should be so constructed as to exhibit no distinction between the accommodation for the rich and the poor, and have no doors by which any could be excluded from unoccupied spaces. There would be no complete appropriation of sittings, except such as might take place for the sake of mutual convenience and decent order; and all spaces not occupied at the commencement of the service would be available for those present who required it. A great increase in the number of sittings would be thus obtained; and where four hundred were accommodated before, at least five hundred, and often more, might be seated. The appearance of churches would be improved to a degree that can hardly be believed, except by those who have witnessed this change in the Temple, and a few other English churches, or have observed the striking and beautiful appearance of Roman Catholic churches abroad. The invidious exclusion of poor and shabbily-dressed persons from the best parts of churches would be avoided; and if pews were retained at all, they should be ranged round the walls in the worst instead of the best situations, and the centre given up to those who are least able to hear and understand at a distance. And though it may be objected that

this mixture of classes is a dangerous innovation, and though the rich families may at first refuse to give up their great pews in spite of reason, thinking it monstrous and unworthy that they should sit by the side of a poor person; yet, independently of the folly of such a description of pride, it should not be forgotten that great benefit may accrue by the nearer juxtaposition of the population of a parish in the parish church, for the attendance of the rich will encourage the poor to come, and the presence of both classes mingled together on the same floor will have a reciprocal influence on the behaviour of each. If the poor take advantage of the increased accommodation afforded to them, and attend in increased numbers, the higher classes will be ashamed to stay away; and if the latter make a point of attending, the former will feel the force of the example. Thus much amendment may be expected to follow this reform, both in the numbers of the congregation, and the behaviour of those present.

It is much to be feared that this arrangement will be often objected to, as introducing a principle of confusion, and a levelling democratic system into our churches. To this I reply, in the words of an able friend and writer,—“The principle of spiritual equality

between rich and poor, is the very principle of Christianity itself, and to act upon such a principle is the duty of every Christian; and to neglect or violate such a principle, is to subvert the fundamental laws of Christianity itself. Christianity acknowledges an aristocracy, but not in pews; respects the privileges of birth, but not in public worship: there men come to abase, not to glorify and exalt themselves; to acknowledge their own unworthiness to be the least and lowest of God's children; not to say, 'I am better than thou,' or 'Sit here under my footstool.' How offensive then must it be in God's sight, when the poor, whom Christ counted happy, are not only not respected, but dishonoured and contemned; not only dishonoured, but thrust out and spurned away; while the rich enlarge their ample seats, and make broad their spacious resting-places, *not to admit their fellow-Christians, but pertinaciously to exclude them!* How unacceptable must that worship be in the eyes of the great Father of all, which borrows the cloak of humility to cover its own disdainful pride; and which justifies the neglect of the common calls of charity, by the pretence of the necessity of order, and the duty of maintaining worldly subordination! When were the Christian poor ever found to trample on the robes of the wealthy, and thrust

aside the claims of their superiors? Where do they disorderly intrude in public worship, and in time of Holy Communion rush to the table in 'unseemly crowds,' forcing the rich to the last and lowest place? Then you can scarce induce any of them to come before others; they wait in humility, and take the lowest room, though they who honour the poor would fain bid them come up higher. Shame on the suspicion that cannot trust them to be decent who are modestly respectful; that will not believe that they can honour those who honour them, when they even now honour those by whom they are dishonoured!"

Such, I believe, is the true answer to the objection alluded to; but it will scarcely suffice to overcome entirely the serious obstacles which the principles laid down in this chapter will surely meet with, when it is attempted to carry them into full effect. Pride, exclusion, that inveterate constitutional feeling of aristocracy which pervades all classes of Englishmen, and the strong indisposition to any change or interference with the old order of things—the *vis inertiae*—of an agricultural congregation will in some instances meet them at every step, and oppose their progress. There may, perhaps, be cases where such an attempt, for the present, at least, would be altogether hopeless; and we

must be content to wait till the gradual progress of correct information, and the satisfactory results of experiments already made in that direction, shall have awakened a better taste and more enlightened views on these subjects. In the mean time, we would hope that there is no case so desperate as not to admit of some effort towards improvement; some approximation to the true principle, such as has been recently effected in some parishes with the most perfect success. Amongst other parishes which have taken the lead in the career of enlightened improvement, is that of Chesterfield, the interior of whose beautiful church has lately undergone an entire restoration. As the plan there adopted presents many of the advantages of the open system, and is, I conceive, free from every possible ground of objection on the part of the admirers of close pews, it may be desirable to give a more detailed account of it, with which I have been kindly furnished by a gentleman on whose authority and knowledge of the facts I can confidently rely.

Chesterfield church is an extensive structure, and the only place of worship connected with the Church in a town of more than eight thousand inhabitants. It consists of a nave, transept, and chancel, and until a recent

period, the floor of the nave, which was divided from the rest of the church, and the galleries which surrounded the nave on every side, were entirely occupied by close pews. Most of these pews were regarded and claimed by different inhabitants as private property; and in some instances, individuals were considered to be the owners and proprietors of a considerable number of pews, and were in the habit of letting them at certain rents, like houses, conveying them by sale, devising them by will, and in all respects treating them like other property. The consequence of these long-continued practices was, that though there were 1253 sittings in the church before the alterations were commenced, the whole of them were appropriated to families or individuals, with the exception of 64 sittings for adults, and some forms for children.

At last the almost total exclusion of the poor inhabitants of the town rendered some extensive alteration in the arrangements of the parish-church absolutely necessary. But in order to effect various improvements and alterations which were intended to increase the accommodation, it was necessary to obtain a faculty, the application for which was opposed by numerous claimants of pews. As, however, it was clear the majority of such claims had no

legal foundation whatever, the matter was ultimately compromised by an agreement that the claims of all parties who had been in the habit of letting pews should be entirely disregarded, but that the churchwardens should provide sittings for such householders as had previously been permanent occupiers of pews, and should not disturb them so long as they remained parishioners, and frequented the church as their ordinary place of worship.

This compromise and agreement being completed, the faculty was obtained, which contained special provisions in favour of all pews held by faculty or prescription, but directed that the remainder of the church should be entirely free. And it was discovered, on making an investigation into the different claims, *that the only pews held by either of these recognized titles* were the corporation seats.

Powers being thus obtained to proceed with the work, the whole floor of the church was furnished with open seats, with the exception of the corporation pews mentioned above, which still remain closed and appropriated: and the general result of these arrangements, by which a communication was opened between the nave and the other parts of the church, which had previously been divided, and nearly the whole floor furnished with open seats, was an increase

of accommodation to such an extent, that sittings were obtained for 1808 persons, or nearly 600 more than could be accommodated before.

When these alterations were completed, the churchwardens, in pursuance of this agreement, *allotted* seats to those parties who had regularly occupied pews before the open seats were adopted; but they required them in every instance to sign a memorandum embodying the circumstances under which the allotment was made; and in this manner 892 sittings were temporarily allotted and appropriated.

But though this is the case with regard to that number of sittings, the churchwardens will from year to year examine the list of these allotments, and on the death or removal of any of the parties, their seats will not be again appropriated, but are intended to remain free like the rest of the church. With regard to the galleries of the church, closed pews are still allowed to remain in that quarter.

With regard to that part of the church which is furnished with open seats hitherto left free and unappropriated, it is found among the regular frequenters of the church that they have little difficulty in seating themselves on successive Sundays in the same free-sitting; and so great is their security, that many persons have furnished the free seats with cushions and

hassocks. And both in the case of the allotted seats, and those free seats which are constantly occupied by the same persons, they are open to the public if they are *not filled* by those to whom allotment or mutual convenience has assigned them; but it is rarely found that any regular attendant is disturbed in his usual sitting; nor has this alteration caused any indecorous confusion amongst the poorer claimants for accommodation.

Lastly, the congregations attending the church have been much more numerous since the period when these arrangements were completed, and it is happily found that many more of the poor now come to church regularly than before the alterations were made.

This example of the restoration and reformation of a church furnishes an illustration of several important points. In the first place, it is clear that by the alterations lately effected, the very same edifice which formerly contained about 1200 sittings, now affords accommodation to more than 1800 persons. And this surprising increase was simply effected by contesting all doubtful claims to the exclusive appropriation of pews; by pressing into the service of the parish every available space in the church; and by substituting uniform open benches for the closed and variously-shaped pews. Nor can

it be doubted that when more accommodation is wanted in *any* church at present furnished with pews, it may to a certain extent be obtained by following the example of the inhabitants of Chesterfield, who have so honourably led the way.

It also exhibits the alarming extent to which the gradual and illegal appropriation of pews is sometimes carried. In this case it may be truly said that the great mass of the poorer inhabitants were literally excluded from the services of the Church, for there were only sixty-four sittings for adults left unappropriated in the whole building. To call this, therefore, the poor man's church, was to pay the church of Chesterfield a very idle compliment indeed.

Again, this example proves that where the poor are made to feel that they can obtain accommodation as a matter of right, and of the same description as that which is offered to the rich, they are disposed to attend the services of the Church, and by the adoption of these plans are greatly encouraged to do so. It is also satisfactory to find that they can appreciate such arrangements properly, and seat themselves, Sunday after Sunday, without disturbance or confusion. And it should be borne in mind that with respect to those sittings which were not temporarily allotted by the church-

wardens, such perfect liberty and equality prevail as to afford a complete proof that there is no reason to apprehend any indecorous movements when other churches are thrown open to all alike.

It also appears from the circumstances of this case, how large a proportion of claims to the exclusive ownership of seats may exist and be acquiesced in without having any legal foundation whatever to support them. This is an encouraging consideration to those who are anxious to effect alterations of this kind in favour of the poor in other populous districts, inasmuch as it proves that a firm and temperate investigation will probably have the effect of destroying a great majority of the claims to pews, few of which will bear the test of a searching legal inquiry.

There is one other circumstance which I must briefly notice. It would appear from the account that I have been favoured with, that with respect to all those seats which have not been allotted to the former occupiers of pews, the inhabitants of the parish are allowed to *seat themselves* where they please. It seems in fact, that the churchwardens do not interfere at all in distributing this portion of the sittings amongst the parishioners, but allow each person to find the best accommodation that he can for

himself. It will be observed that if this is the case, merely because no applications have been made to them to assign sittings in that part of the church, and no confusion has arisen from it, they are strictly correct in abstaining from interference ; but, on the other hand, if applications have in fact been made and refused, their conduct would be in direct opposition to the rules which I have collected for the government and guidance of churchwardens. These rules, it will be remembered, have been suggested from time to time by the ecclesiastical judges, and upon the principles so laid down, the conduct of churchwardens would doubtless be reviewed, whenever any dispute about their distribution of seats is referred to appellate tribunals. I stated these rules in another place, (though unwillingly and as a reluctant witness,) because they have been recognised by the Ecclesiastical Courts. But it would be very satisfactory to find that there is no necessity for having recourse to them, and that those distinctions in accommodating the upper and lower classes, which they seem to encourage, are neither sought to be enforced by the congregation, nor are really essential to the preservation of due decorum. The case of the church of Chesterfield, therefore, goes further, as an illustration of several previous remarks, than I expected it

would, and realizes, at least with respect to a considerable part of the church, that equality and impartiality in its arrangements, which I have endeavoured in this chapter to point out as the true principles of church-accommodation.

With these remarks on the particular circumstances of Chesterfield church, I now hasten to conclude this little work. Experiments like that at Chesterfield are likely to be tried in many districts of England before many years have elapsed; for it is certain that dissatisfaction with our unsightly and unpopular pews is rapidly increasing. It is hoped that the general information contained in the preceding pages may serve to enable those who read them to proceed with a competent knowledge of those incidents of pews which are of recognized legal validity. Possessed of such information, they may proceed with safety, carefully inquiring into all claims with a view to distinguish between those rights which are legitimate, and those supposed rights which have no foundation in law. It is hoped also that some useful topics may be supplied for the service of those who wish to press such alterations as those in Chesterfield church upon the attention of others.

Lastly, it appears to me that those who are really anxious to promote the throwing open of

churches to the poor, are most likely to effect that object by refusing to subscribe towards the expenses of any new church, or of any alterations or restorations of old churches, which are not to be built or carried on upon the principles of equal, impartial, and open accommodation for worshippers of all classes. There are many persons engaged in the building or enlargement of churches, whose indifference as to the arrangements of the interiors, or whose actual preference for closed pews, might be materially influenced, if they found that scanty funds only for their purpose would be forthcoming, unless they fell in with the views of the subscribers on this point. In short, the advantages and benefits to be obtained by reforms like that of Chesterfield are so considerable and so obvious, that every means should be adopted to promote them ; whether arguments addressed to the parishioners, or the withholding of subscriptions till these conditions are complied with, or the publication of those examples which illustrate these views, or any other means which particular circumstances may suggest. And it is in the earnest hope that this little work may in some degree, however insignificant, assist in restoring to the Church of England the noble title of "the poor man's Church,"—a title she has long lost,

and is only now beginning to regain—that I commit these pages to the press; believing that though the performance may be defective and imperfect, it will at least supply the information it contains in a shorter and more comprehensive form than any work which I have been able to obtain.

THE END.

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